

**BEFORE THE
U.S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE**

Open and Non-Discriminatory Movement)	MMS Advance
Of Oil and Gas as Required by the)	Notice of
Outer Continental Shelf Lands Act)	Proposed Rulemaking

**COMMENTS OF THE
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA**

The Independent Petroleum Association of America (“IPAA”) submits these comments in response to the Advanced Notice of Proposed Rulemaking on Open and Non-Discriminatory Movement of Oil and Gas on the Outer Continental Shelf as Required by the Outer Continental Shelf Lands Act (“Advance NOPR”), issued by the Minerals Management Service (“MMS”) on April 12, 2004.

IPAA supports the efforts of MMS to step into the void created by the October 2004 decision by the U.S. Court of Appeals for the District of Columbia in *Williams Cos. v. FERC*, 345 F.3d 910 (D.C. Cir. 2003). In the Williams case, the court held that the Federal Energy Regulatory Commission (“FERC”) does not have general rulemaking authority to implement Section 5(f)(1)(A) of the Outer Continental Shelf Lands Act (“OCSLA”). IPAA supports a regime of light-handed regulation of OCS pipelines, as FERC had imposed under Order Nos. 639 and 639-A, prior to the Williams decision. Such light-handed regulation would consist of reporting requirements and complaint procedures to provide transparency and means of redress to ensure open and non-discriminatory access to transportation on the OCS, as envisioned under Section 5(f)(1)(A) of the OCSLA.

CORRESPONDENCE AND COMMUNICATIONS

The name, title, and mailing address of the person to whom correspondence and communications concerning this proceeding are to be addressed is:

Susan W. Ginsberg
Director, Natural Gas Regulatory Affairs
Independent Petroleum Association of America
1201 15th Street, N.W., Suite 300
Washington, D.C. 20005
(202) 857-4722

NATURE OF INTEREST

IPAA represents thousands of American independent oil and natural gas producers and associated service companies. Independent producers drill 85 percent of the wells in the United States and produce 75 percent of the nation's natural gas and 40 percent of the country's domestic crude oil supply (60 percent in the Lower-48 states).

IPAA has been a consistent advocate for open and non-discriminatory access on interstate pipelines, as enforced by FERC. The need for monitoring and enforcement has not diminished because the court found FERC lacking in jurisdiction. In fact, the need for active oversight is even more important with the number of offshore pipelines now classified as non-jurisdictional gathering facilities under the Natural Gas Act. It simply means that this task must be carried out by MMS as the agency entrusted by Congress to ensure open and non-discriminatory access of oil and gas transportation on the offshore.

COMMENTS

IPAA supports a system of reporting, whereby pipeline operators would file with MMS material contract terms. Material contract terms would include receipt point(s), delivery point(s), volume, rate, term, and dedication of reserves. Without such disclosure, shippers will have no means for determining whether similarly situated

shippers are being treated in a not unduly discriminatory manner. This reporting requirement would be comparable to that imposed by FERC under Order Nos. 639 and 639-A.

The second necessary component of MMS oversight is the ability to seek redress in the event the contract terms indicate discrimination. IPAA encourages MMS to adopt a complaint hotline, similar to FERC's enforcement hotline. In many instances, the hotline will provide an informal means to resolve problems. However, should informal resolution prove unsuccessful, MMS must have in place an adjudication mechanism to allow for prompt review and resolution of the dispute.

IPAA commends MMS for its initiative to enforce open and non-discriminatory access on the offshore. We encourage MMS to rely, to the maximum extent permitted by the courts, on the existing resources developed by FERC for monitoring and enforcing open and non-discriminatory access on oil and gas pipelines. FERC has proven itself to be an able proponent, with effective procedures and experienced staff to carry out its mission under the Natural Gas Act and Natural Gas Policy Act. While FERC provides a good example for MMS to impose a system for light-handed regulation, reliance on FERC may help to minimize duplication of resources by MMS.

CONCLUSION

IPAA supports MMS adopting a mechanism for light-handed regulation that would entail reporting of material contract terms and a complaint and adjudication process. To the extent MMS can rely on existing resources, such as those housed at

FERC, IPAA encourages cooperation to minimize resources and to replicate a system proven effective in encouraging open and non-discriminatory access.

Respectfully submitted,

A handwritten signature in dark ink, reading "Susan W. Ginsberg", is written over a horizontal line.

Susan W. Ginsberg
Director, Natural Gas Regulatory Affairs
Independent Petroleum Association of America
1201 15th Street, N.W., Suite 300
Washington, D.C. 20005
Tel: (202) 857-4722

June 14, 2004